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13 Attorneys for Defendants
14 HSBC MORTGAGE CORPORATION (USA) AND
15 HSBC BANK USA, N.A.

16 UNITED STATES DISTRICT COURT
17
18 NORTHERN DISTRICT OF CALIFORNIA
19
20 SAN FRANCISCO DIVISION

21 Philip Wong, Frederic Chaussy, and Leslie
22 Marie Shearn, individually, on behalf of all
23 others similarly situated, and on behalf of
24 the general public,

25 Plaintiffs,

26 v.

27 HSBC Mortgage Corporation (USA);
28 HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

Defendants.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF MICHELLE R.
BARRETT IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION UNDER FED. R. CIV.
P. 23**

Date: October 10, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

I, MICHELLE R. BARRETT, hereby declare and state as follows:

1. I am an attorney licensed to practice in the State of California, and I am a shareholder in the law firm of Littler Mendelson, attorneys for Defendants in the above-captioned matter. I have personal knowledge of the matters set forth below, and if called as a witness I could testify competently to matters contained therein.

2. Defendant HSBC Mortgage Corporation (USA) (“HMCU”) has produced lists of putative FLSA class members to Plaintiffs on several occasions during this litigation. In addition, HMCU previously prepared Rule 23 class action lists by state that have not been produced in this matter, as they have not yet been requested. I compared these FLSA and Rule 23 lists and removed duplicate entries to arrive at the following numbers: There are only 40 putative class members in California, 53 putative class members in New Jersey, and 386 putative class members in New York.

3. I have reviewed all consent forms filed by Plaintiffs for the FLSA opt-in action. From this review, I determined that only 14 of the 40 California putative class members, 16 of the 53 New Jersey putative class members, and 50 of the 386 New York putative class members have chosen to opt-in to this lawsuit, which is only 16.7% of all putative class members. I have determined, from reviewing the FLSA and Rules 23 lists referenced above, that not all of the individuals opting into the FLSA suit are properly within the classes sought by Plaintiffs.

4. Attached hereto as Exhibit 1 is a true and correct copy of the U.S. District Court for the Central District of California’s Order DENYING Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement Between Plaintiffs and Defendants, Filed June 20, 2008. The Order, dated August 21, 2008, pertains to *Morgan Rivera, et al. v. Solstice Capital Group, Inc., et al.*, Case No. CV 07-1852 PSG (VBKx). The attorneys of Nichols Kaster are counsel of record for Plaintiffs in the *Rivera* case. Pursuant to Federal Rule of Appellate Practice 32.1, this Order may be cited for any purpose, provided a copy of the Order is filed and served with the brief or other paper in which it is cited. *See also* Civ. L.R. 3-4(e), 7-14 (prohibiting citation only of orders specifically designated as “not for citation”); *Saunders v. Equifax Info. Servs., L.L.C.*, 469 F. Supp. 2d 343, 353 n.14 (E.D. Va. 2007) (“Recently amended Rule 32.1 of the Federal Rules of Appellate Procedure now permits a party to cite to unpublished federal court decisions for their persuasive value or for any other reason.”).

5. A true and correct copy of an HSBC Mortgage Corporation (USA) Retail Loan Consultant Incentive Plan is attached hereto as Exhibit 2.

6. Attached as Exhibit 3 are true and correct copies of personnel documents regarding opt-in plaintiffs, which HMCU produced to Plaintiffs in this litigation. These documents

are from 38 of the FLSA opt-in plaintiffs' personnel files, specifically their employment offer letters from HMCU, which describe how they were compensated during their employment with HMCU. A comparison of these offer letters alone demonstrates more than 23 different compensation structures, with variable amounts and lengths of forgivable draws offered.

7. True and correct copies of witness declarations that Defendants submit in opposition to Plaintiffs' motion for class certification are attached as follows:

DECLARATION	EXHIBIT NO.
Declaration of David Gates (Dkt. # 81)	4
Declaration of Jeanette Jennings (Dkt. # 80)	5
Declaration of Jeffrey Needham (Dkt. # 82) ("Needham I")	6
Declaration of Stella Chan (Dkt. # 83)	7
Declaration of Michael Coyne (Dkt. # 84)	8
Declaration of Lawrence Kelter (Dkt. # 85)	9
Declaration of Daniel Kilfoil (Dkt. # 86)	10
Declaration of Michelle Kim (Dkt. # 87) ("Kim I")	11
Declaration of Michelle Kim (Dkt. #88) ("Kim II")	12
Declaration of Eric Liboy (Dkt. # 89)	13
Declaration of Kevin MacPherson (Dkt. # 90)	14
Declaration of Evette Montieth (Dkt. # 91) ("Montieth I")	15
Declaration of Michael O'Rourke (Dkt. # 92)	16
Declaration of Amy Young (Dkt. # 93)	17
Declaration of Amy Ku (Dkt. # 94)	18
Declaration of Jeffrey Needham ("Needham II")	19
Declaration of Lisa Petrus	20
Declaration of Debbie DeZego	21
Declaration of Jackie Markunas	22
Declaration of Gloria Lin	23

1	Declaration of Lisa Lee	24
2	Declaration of Kenneth Chan	25
3	Declaration of Abby Ho	26
4	Declaration of Kristofer Pogorzelski	27
5	Declaration of Evette Montieth (Montieth II)	28
6	Declaration of Patricia O'Connor	29
7	Declaration of Varughese Oommen.	30
8	Declaration of Rebecca Slapo.	31
9	Declaration of Rhonda Conte.	32
10	Declaration of Greg Thelian.	33

11 8. In addition, I have attached relevant excerpts of depositions taken in this case
12 as follows:

13	DATE	DEPONENT	EXH. NO.
14	9/11/2007	David Gates	34
15	11/29/2007	Plaintiff Philip Wong	35
16	12/19/2007	Jeannette Jennings	36
17	3/13/2008	Plaintiff Frederic Chaussy	37
18	9/3/200	Plaintiff Leslie Shearn	38

19
20 I declare under penalty of perjury under the laws of the United States of America and
21 the State of California that the foregoing is true and correct. Executed this 19th day of September,
22 2008 at San Francisco, California.

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MICHELLE R. BARRETT

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